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OFFICE OF PETITIONS

In re Application of :
Prpic et al. :
Application No. 09/657,956 : DECISION ON
Filed: September 8, 2000 : PETITION
Atty Docket No. JP920000170US1:

This is a decision on the PETITION TO WITHDRAW HOLDING OF
ABANDONMENT filed December 26, 2006.

The above-identified application became abandoned for failure to
file a timely and proper reply to the non-final Office action
mailed April 20, 2006. This Notice set a three-month shortened
statutory period for reply, with extensions of time obtainable
under 37 CFR §1.136(a). No reply having been received and no
extensions obtained, the above-identified application became
abandoned effective July 21, 2006. A courtesy Notice of
Abandonment was mailed on December 8, 2006.

In response, the instant petition was filed, asserting that the
Office action was never received at the address for attorney
Anthony England or by the assignee.

The Office action was mailed to the correspondence address of
record. Thus, there is a strong presumption that the
correspondence was properly mailed to the applicant at the
correspondence address of record. In the absence of
demonstrated irregularities in mailing of this Notice,
petitioner must submit evidence to overcome this presumption.
The showing required to establish non-receipt of an Office

communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner has submitted evidence to show non-receipt of the Office action at the address of attorney Anthony England. However, the correspondence address of record is that of the assignee. Petitioner has further submitted evidence to show that requests to change the correspondence address were filed with the Office.

Petitioner's evidence has been considered, and found persuasive. The evidence and the application record show that, on January 20, 2005, an attorney then of record¹, T. Rao Coca, filed a power of attorney appointing attorney England and changing the correspondence address. This change was not made of record. Thus, the review of the application confirms irregularities in the mailing of the Office action mailed April 20, 2006. The Office action was not mailed to the proper address. Under the circumstances, withdrawal of the holding of abandonment is warranted.

In view thereof, the notice of abandonment mailed December 8, 2006 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 2143 has been advised of this decision. The application file is, thereby, forwarded to the Technology

¹ A review of the record reveals that the declaration for patent and power of attorney filed with the application did not appoint attorney England as an attorney of record. Further, on February 1, 2002, one of the attorneys of record filed an appointment of attorneys, which included a change of correspondence address to the assignee address currently of record. This appointment of attorneys also did not include attorney England. On August 6, 2002, a second change of correspondence address was filed by an attorney of record to again request change of the correspondence address to the assignee address currently of record.

Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the final Office action mailed April 20, 2006 and for re-starting of the period for reply.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looping initial "N" and a cursive "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions